

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of Section 73.622(b),  
 Table of Allotments,  
 Digital Television Broadcast Stations  
 (Kingston, New York)

)  
 )  
 ) MM Docket No. 00-121  
 ) RM 9674  
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To: Chief, Video Services Division  
 Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV, Kingston, New York (Facility Id. No. 74156), by its attorneys and pursuant to section 1.429(f) of the Commission's rules, hereby opposes the Petition for Reconsideration filed by WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York (Facility Id. No. 51441) in the above-captioned proceeding. As demonstrated below, WKOB's Petition relies upon factual inaccuracies and presents the same tired arguments that have already been rejected by the Bureau and the Commission in this and related proceedings. Accordingly, the Petition should be immediately denied.

The Petition challenges the Bureau's decision to change WRNN's DTV allotment from Channel 21 to Channel 48.<sup>1</sup> WKOB argues that the Bureau should reconsider its decision because WRNN's subsequently-filed application for a construction permit to implement the

<sup>1</sup> *In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kingston, New York), DA 02-169 (rel. Jan. 25, 2002) ("Channel 48 Order").*

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channel change allegedly increases interference above the level caused by the allotted facilities. WKOB also alleges that the Bureau's decision failed to consider properly the impact of the allotment on LPTV displacement. Finally, WKOB faults the Bureau for relying on an effective FCC order confirming WKOB's own secondary status. Contrary to the allegations in WKOB's groundless Petition, the FCC approved the channel change because it would yield substantial public interest benefits by "increas[ing] digital service to the public in furtherance of the Commission's goals with respect to the establishment of digital television service."<sup>2</sup> WKOB's Petition presents nothing to alter this conclusion.

WKOB suggests that the Bureau should reconsider its allotment decision because WRNN's pending application for a DTV construction permit to implement the authorized channel change<sup>3</sup> allegedly proposes an increase in the unmasked interference over that caused by the theoretical allotment facilities. Most fundamentally, this argument is completely irrelevant insofar as this allotment proceeding is concerned. As WRNN has previously demonstrated, the FCC evaluates allotment proceedings on the basis of theoretical sites and facilities, and resolves issues relating to actual technical coverage at the application stage, rather than the allotment stage.<sup>4</sup> Indeed, WKOB has raised the identical arguments in an informal objection to the *Channel 48 Application*, which remains pending.<sup>5</sup> Even in the application proceeding, WKOB

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<sup>2</sup> *Channel 48 Order*, ¶ 8.

<sup>3</sup> See FCC File No. BPCDT-20020130AAQ ("*Channel 48 Application*").

<sup>4</sup> *WRNN-TV Associates Limited Partnership, Opposition to Motion for Stay* at 4 (filed Mar. 14, 2002) ("*WRNN Opposition to Motion for Stay*"); see, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caldwell, College Station and Gause, Texas)*, 15 FCC Rcd 3322, ¶ 14 (2000); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bradenton and High Point, Florida)*, 10 FCC Rcd 6551, ¶ 5 (1995).

<sup>5</sup> *WKOB Communications, Inc., Informal Objection* (filed Mar. 7, 2002). WRNN responded to the informal objection on March 20, 2002.

fails even to allege that the *Channel 48 Application* violates any specific FCC rule or policy. It alleges no violation, because it cannot do so. In fact, WRNN's maximization application is entirely consistent with and encouraged by FCC policy, which clearly favors the maximization of DTV service areas.<sup>6</sup>

Moreover, even if WKOB's claims regarding the facilities requested in WRNN's application were somehow found to be relevant, the arguments are premised on factual inaccuracies and, accordingly, are fatally flawed. WKOB apparently double- or triple- counted interference figures involving four television stations that theoretically would receive interference from WRNN's requested facilities and, as a result, grossly overstated the level of predicted interference.<sup>7</sup> Therefore, notwithstanding WKOB's claim that the facilities specified in the *Channel 48 Application* would increase the level of interference by 12,263 persons, the data show that interference will, in fact, be *reduced* or, at an absolute minimum, stay essentially the same, as the facilities used for the theoretical Channel 21 allotment.

Employing the interference figures for the licensed facilities of all potentially affected stations, the number of people predicted to receive interference will drop 1,178 *below* the

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<sup>6</sup> See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-330, ¶¶ 29-30 (rel. Nov. 15, 2001); *Advanced Television Systems (Sixth Report and Order)*, 12 FCC Rcd 14588, ¶¶ 30-31 (1997) ("*Sixth Report and Order*").

<sup>7</sup> The Application included a table that listed all television stations that would receive predicted interference from WRNN's proposed facilities and the number of people within the interference areas. Four stations (WNJU(TV), WYDN-TV (NTSC), WYDC(TV) and WNJN(TV)) hold construction permits, or have an application for construction permit pending, in addition to their licensed facilities. To ensure a complete record, the Application gave population figures for each of the licensed, authorized but unconstructed, and applied-for facilities for these stations. WKOB apparently added all figures for these stations in its interference analysis, which resulted in overstating the number of people predicted to receive interference by *thousands*. See *Channel 48 Application* at Technical Exhibit, 4. WKOB's claim in connection with its motion for stay that the *Channel 48 Application* "did not present any interference figure that would permit the Commission to make an easy direct comparison to data that were relied on to justify rulemaking" is fatuous. *WKOB Communications, Inc., Reply to Opposition to Informal Objection* at 2 n.2 (filed Apr. 1, 2002). The *Channel 48 Application* clearly indicated which numbers were based on the relevant stations' licensed facilities and construction permits by including a notation, either "CP" or "LIC," after the station's call sign.

Channel 21 figure.<sup>8</sup> Moreover, utilizing the interference figures for those stations that hold or have applied for construction permits, predicted interference will be caused to 7,158 fewer people.<sup>9</sup> The only way to manipulate the interference figures in a manner that shows a theoretical increase in interference is to mix licensed and unlicensed facilities to achieve a “worst case” scenario. In that instance, the facilities in the Application would increase predicted interference above the level caused by the Channel 21 allotment by a statistically meaningless 1,806 people.<sup>10</sup> Of course, interference data among licensed and unlicensed stations could just as logically be combined to create a “best case” scenario, which would reduce the level of interference by 9,579 people below the Channel 21 allotment. Accordingly, even if the facilities proposed in the *Channel 48 Application* were relevant here, the fact that WRNN could dramatically increase service while reducing overall interference shows conclusively that the grant of the petition to change WRNN’s DTV allotment to channel 48, and the related *Channel 48 Application*, are manifestly in the public interest.<sup>11</sup>

Aside from WKOB’s irrelevant and incorrect assertions regarding predicted interference, the petition for reconsideration merely repeats the same arguments previously advanced by WKOB and rejected by the Bureau in the *Channel 48 Order* and by the full Commission with regard to WKOB’s unsuccessful attempt to obtain Class A status. WKOB mistakenly claims that

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<sup>8</sup> Licensed facilities for all stations are predicted to receive interference to a total of 62,019 people, which is 1,178 less than the estimate of 63,197 caused by the Channel 21 allotment. *Id.*

<sup>9</sup> Using the authorized, but unconstructed facilities of WNJU(TV), WYDN-TV (NTSC), and WNJN(TV), and the applied-for facilities of WYDC(TV), the interference total is 56,039, or 7,158 less than the Channel 21 allotment. *Id.*

<sup>10</sup> This figure includes the licensed facilities of WNJU(TV), the permitted facilities of WYDN-TV (NTSC) and WYDC(TV), and the requested facilities of WYDC(TV), for a total of 65,003. *Id.*

<sup>11</sup> Moreover, the Application complies in all respects with the Commission’s technical rules, including the “10%/2%” interference standard in Section 73.623(c) and the city grade service requirement of Section 73.625. See *WRNN-TV Associates Limited Partnership, Opposition to Informal Objection* at 4 (filed Mar. 20, 2002) (“*WRNN Opposition to Informal Objection*”).

the Bureau failed properly to address the potential impact of the channel change on WKOB, which holds a construction permit to operate on Channel 48.<sup>12</sup> To the contrary, the Bureau fully considered the effect of the allotment on WKOB-LP. Indeed, the *Channel 48 Order* is entirely consistent with repeated Commission pronouncements regarding the secondary status of low power stations in the DTV implementation scheme.

Recognizing that “there is insufficient spectrum available in the broadcast TV bands to factor low power displacement considerations in making DTV allotments,” the Commission specifically held that “it will be necessary to displace a number of LPTV and TV translator operations, especially in the major markets,” to provide the public with the overriding benefits associated with DTV service.<sup>13</sup> Indeed, on reconsideration, the FCC reiterated that “as secondary operations, low power stations must give way to new operations by primary users of the spectrum.”<sup>14</sup> The Commission further noted that any “measures to accommodate low power stations would, by their very nature, pose restrictions on [the agency’s] choice of allotments for full service DTV stations.”<sup>15</sup> Thus, the FCC generally refused to consider requests from low power operators to modify the channels allotted to full-power stations because of the potential adverse impact such changes would have on DTV implementation.<sup>16</sup>

The Bureau fully considered all the facts raised by WKOB and correctly applied the law as articulated by the Commission. After “carefully review[ing] all of the pleadings” and

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<sup>12</sup> *Petition* at 3.

<sup>13</sup> *Sixth Report and Order*, 12 FCC Rcd at 14651; see *WRNN Opposition to Motion for Stay* at 3-4.

<sup>14</sup> *Advanced Television Systems (Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order)*, 13 FCC Rcd 7418, 7461 (“*Sixth Report and Order Recon.*”).

<sup>15</sup> *Id.* at 7462.

<sup>16</sup> See *Advanced Television Systems (Second Memorandum Opinion and Order)*, 14 FCC Rcd 1348, 1385 (1998); *WRNN Opposition to Motion for Stay* at 4.

weighing the evidence presented in the proceeding, the FCC found that the public interest benefits of WRNN's proposal were substantial and in the public interest. The FCC determined that WKOB was secondary and, as a result, was not entitled to protection from interference. The Bureau appropriately considered WKOB's arguments regarding the alleged impact on low power service, but obviously found them unavailing.<sup>17</sup>

WKOB's authorization to use Channel 48 has always been, and will always be, secondary in nature. Indeed, in its recent decision rejecting WKOB's application for review of the order denying its request for Class A eligibility, the Commission held that WKOB was clearly on notice that "the channel 48 spectrum being auctioned was secondary in nature."<sup>18</sup> Although WKOB laments that it paid a substantial sum at auction for its Channel 48 authorization, it was expressly admonished that the authorization was for a secondary service – both at the time the Commission announced the bidding procedures<sup>19</sup> and, more tellingly, on the

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<sup>17</sup> In its unauthorized reply to WRNN's opposition to the Motion for Stay of the *Channel 48 Order*, WKOB asserts that an amendment to the DTV Table of Allotments, which would displace a LPTV station, may be granted only if the change is "essential" or "justified by technical necessity." *WKOB Communications, Inc., Reply to Opposition Motion for Stay* [sic] at 2 (filed March 22, 2002); 47 C.F.R. § 1.45(d) (replies to oppositions for motions for stay "should not be filed *and will not be considered*") (emphasis added). Not only are such allegations unsubstantiated by citation to any FCC order or decision, they are directly contrary to clear statements of law. Indeed, in the *Sixth Report and Order Recon.*, the Commission confirmed its belief that its "decision to retain the secondary status of low power stations with regard to digital television and other new primary television services is appropriate," and explicitly recognized that a number of LPTV stations would be displaced notwithstanding the greater flexibility to modify LPTV stations that the FCC had determined was appropriate. *Sixth Report and Order Recon.*, 13 FCC Rcd 7418, ¶ 106; *id.* at ¶ 107 ("we must ensure that our goals for the implementation of DTV are achieved before taking any additional steps to minimize the impact on these secondary operations"). In addition, even if WKOB-LP were to be treated as a Class A station, it would be subject to displacement to clear the way for the introduction of full power DTV service. See *Establishment of a Class A Service*, 15 FCC Rcd 6355, ¶¶ 61-64 (2000) ("Class A Order"), *clarified on recon.*, FCC 01-123 (rel. Apr. 23, 2001).

<sup>18</sup> *WKOB Communications, Inc.*, FCC 01-375, ¶ 9 (rel. Jan. 11, 2002) (petition for reconsideration pending).

<sup>19</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 14 FCC Rcd 8724, 8757 (1999) (stating that the "secondary nature of the LPTV service [ ] . . . would not be altered by the awarding of construction permits for these services by auction.").

face of its construction permit.<sup>20</sup> WKOB's unilateral decision to purchase the authorization at auction, with full knowledge of the risks associated with secondary services, cannot provide a basis to overturn an allotment decision involving a full power television station.

Finally, WKOB asserts that the Bureau improperly relied on the Commission's effective order in *WKOB Communications, Inc.*, which affirmed the Bureau's determination that WKOB is ineligible for Class A status, simply because WKOB has filed a petition for reconsideration of that decision.<sup>21</sup> On three separate occasions, the Bureau and the Commission held that WKOB's failure to comply with the statutory requirements was "significant" and that its programming offerings were wholly insufficient to warrant Class A status, much less to displace the implementation of WRNN's improved DTV service.<sup>22</sup> Specifically, the Commission found that WKOB broadcast only 3 hours per day of programming throughout the specified Class A eligibility period, which fell far short of the 18 hours per day minimum required for Class A status.<sup>23</sup> The repeated filing of petitions for reconsideration of the *Class A Order* does not, and indeed, cannot, consistent with the law or public interest, provide grounds for the Commission to further delay WRNN's ability to initiate DTV service.

In effect, WKOB is seeking to use its baseless petition for reconsideration of *WKOB Communications, Inc.*, to obtain a stay of the effectiveness of the *Channel 48 Order*. However,

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<sup>20</sup> See FCC File No. BPTTL-JG0601NK ("This authorization is subject to the condition that low power television is a secondary service, and that low power television and television translator stations must not cause interference to the reception of existing or future full service television stations on either allotted NTSC or DTV channels, and must accept interference from such stations.").

<sup>21</sup> See *Petition* at 4-5.

<sup>22</sup> See *WKOB Communications, Inc.*

<sup>23</sup> *Id.* at ¶ 9. Indeed, as WRNN demonstrated previously, even if WKOB's prior unsupported and contradictory allegations of fact were assumed to be true, WKOB did not even allege that it would enhance its program schedule to meet Class A standards, at the earliest, until July of 2001, or almost *two years* after the period for establishing Class A eligibility. *Opposition of WRNN-TV Associates Limited Partnership*, at 16 n.44 (filed Aug. 1, 2001).

WKOB has attempted to achieve that result in a separate and equally baseless motion for stay.<sup>24</sup> Indeed, the FCC changed its rules to prevent automatic stays in proceedings to change the FM or TV Table of Allotments, recognizing that the grant of a stay in such proceedings can encourage meritless requests for reconsideration and often has substantial adverse public interest effects, including substantial delay.<sup>25</sup> This reasoning applies with even greater force here, because WKOB is asserting its challenge of the order in its Class A proceeding in an attempt to seek reconsideration of the separate and distinct *Channel 48 Order*. Thus, there is no basis in law or policy to impede WRNN's ability to deliver promptly the benefits of new DTV service to the public.

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<sup>24</sup> *WKOB Communications, Inc., Motion for Stay*, MM Docket No. 00-121 (filed March 6, 2002).

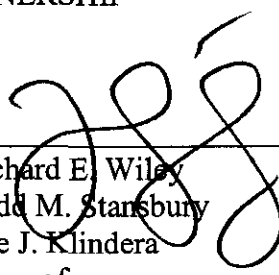
<sup>25</sup> *WRNN Opposition to Motion for Stay*, at 8.

In sum, WKOB has failed to provide a single reason to suggest that reconsideration of the *Channel 48 Order* is appropriate. Accordingly, the Commission should deny the *Petition* without delay.

Respectfully submitted,

WRNN-TV ASSOCIATES LIMITED  
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Dated: April 15, 2002

**CERTIFICATE OF SERVICE**

I, Eve J. Klindera, hereby certify that on this 15th day of April, 2002, I caused copies of the foregoing **Opposition to Petition for Reconsideration** to be sent via postage pre-paid first-class mail delivery to the following:

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